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January 28, 1994

Office of the Attorney General
Attn: Ms. Madeleine B. Johnson
Chair, Opinion Committee
P. O. Box 12548
Capitol Station
Austin, Texas 78711

MBJ
RQ-00657-DM
FILE # *MC 24367-94*
I.D.# *24367*

RQ-657

RE: REQUEST FOR OPINION REGARDING ARTICLE 6701½, V.A.C.S.

Dear Mr. Gilpin:

The Brazoria County Sheriff's Department has cited and is continuing to cite transporters of manufactured housing (i.e. mobile homes) upon country roads who have not been issued the proper permit by the State Department of Highways and Public Transportation ("the Department") pursuant to Article 6701½, V.A.C.S. The cited parties assert as an affirmative defense that they have attempted to obtain the requisite permits from the Department, but were told that the Department has in place a policy whereby no permit will be issued for the transport of manufactured housing upon county roads, that it was a matter for the respective counties to regulate such transport. This office confirmed the existence of that policy by way of a telephone conversation with Ms. Doris Perkins, a unit supervisor with the Department, who stated that the reason for the policy was the Department's lack of information regarding load limits and clearances on county and municipal roads.

Submitted for consideration and answer are the following questions: (1) May the Department decline to issue Article 6701½ permits solely on the basis that the transport of manufactured housing will occur on county roads? (2) If so, is the county empowered to regulate such movement upon county roads?

It is the position of Brazoria County that the answer to both questions is "no".

Article 6701½ reads in pertinent part as follows:

**Manufactured housing and industrialized buildings;
movement of overlength and overwidth on highways**

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A. Manufactured housing as defined by the Texas Manufactured Housing Standards Act (Article 5221f, Vernon's Texas Civil Statutes) and industrialized housing or buildings as defined in Article 5221f-1, Revised Statutes, which is in excess of legal size limits for motor vehicles as defined by law shall not be moved over the highways, roads, and streets in this state except in accordance with permits issued by the State Department of Highways and Public Transportation. Counties and municipalities may designate to said department the routes to be used within the limits of their jurisdiction; however, no additional permit, bond, fee, or license other than required by state law may be required by any county or municipality.

The plain English interpretation of the first sentence makes clear that the Department's permitting authority extends to all highways, roads, and streets in Texas. Article 6701a, on the other hand, specifically limits itself, with respect to permitting heavy trucks, to state highways including farm-to-market and ranch-to-market roads. It would appear that the Legislature could have confined the authority of the Department in Article 6701½ to State highways, as it did in Article 6701a. The Legislature instead used language which seems to encompass county roads within the permitting authority of the Department. As per the second sentence, a county may designate to the Department (not the person seeking the permit) the routes to be used within its jurisdiction, but no additional permit, bond, fee or license may be required by the county.

That a county may designate to the Department, within limits, the route to be taken by the permit holder, indicates that some communication between the county and the Department is necessary. Since the county cannot know when a permit application is submitted, it would seem that either the Department must contact the county for input, or instruct the applicant to contact the county, which may then contact the Department with specific information regarding load limits and clearances on county roads. This would address the policy concerns of the Department regarding its lack of information and knowledge concerning county roads.

We note that the County Road and Bridge Act provides: "The commissioners court of any county may regulate and restrict traffic on county roads and on other county-owned land under its jurisdiction." Article 6702-1, § 2.301(a)(1), V.A.C.S. The County Road and Bridge Act, however, contains no specific grant of authority to issue permits for transport of manufactured housing. Article 6701½(A) specifically sets forth a county's power, or lack thereof, to issue permits for such transport. When two statutes concern the same subject matter, they are to be construed in such a way as to give meaning to both. *J. & J. Beverage Co. v. Texas Alcoholic Beverage Comm'n*, 810 S.W.2d 859, 860 (Tex. App. - Dallas 1991, no writ). A special or specific act is properly regarded as an exception to, or qualification of, a general law on the same subject previously enacted. *Sam Bassett Lumber Co. v. City of Houston*, 198 S.W.2d 879, 881 (Tex. 1947); *Olson v. Central Power & Light Co.*, 803 S.W.2d 808 811 n. 3 (Tex. App. - Corpus Christi 1991, writ denied). See also *Scurlock Permian Corp. v. Brazos*

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County, No. 01-93-00080-CV (Tex. App. - Houston [1st Dist.], Nov. 10, 1993), where the Court held that Article 6701d-11, V.A.C.S. (regarding a county's authority to permit overweight vehicles) prevailed over the County Road and Bridge Act, using the same analysis.

Your attention to this matter is sincerely appreciated. If you have any questions regarding this matter, please do not hesitate to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read "Jim Mapel", written in a cursive style.

JIM MAPEL
BRAZORIA COUNTY DISTRICT ATTORNEY

Prepared by: Brian K. Bricker
Assistant District Attorney

BKB:jkb